

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

INA STEINER, DAVID STEINER, and
STEINER ASSOCIATES, LLC,

Plaintiffs,

v.

EBAY INC., *et al.*,

Defendants.

Civil Action No. 1:21-CV-11181-DPW

MOTION TO PROVIDE SEALED FILING TO UNITED STATES

The United States of America (the “Government”), by and through undersigned counsel, respectfully submits this motion requesting that the Court order the Clerk of Court to provide to the Government a physical copy of Plaintiffs’ Supplemental Opposition to Defendants’ Motions to Dismiss, ECF No. 146 (the “Supplemental Opposition”). In support of this motion, the Government states as follows:

1. On September 29, 2022, Plaintiffs filed their Motion for Leave to File Supplement to Plaintiffs’ Consolidated Opposition to Defendants’ Motion to Dismiss, ECF No. 144 (the “Motion for Leave to File”). The Court granted the Motion for Leave to File on September 30. ECF No. 145. Thereafter, Plaintiffs filed their Supplemental Opposition to Defendants’ Motions to Dismiss, ECF No. 146 (the “Supplemental Opposition”).

2. Shortly after Plaintiffs made these two filings, the Government became aware that both filings contained classified information, and the Court therefore placed them under seal until the Government and the parties could propose a resolution as to how to handle these documents. On December 5, the Government filed a Status Report explaining that, “[t]o date, the Government has been unable to review the Supplemental Opposition, ECF No. 146, because it was placed under

seal before the Government could obtain a copy. The Government intends to file a separate request that the sealed filing at ECF No. 146 be made available to the Government.” ECF No. 161 at 2 (the “Status Report”).

3. The Government hereby files this motion requesting that the Court order the Clerk of Court to provide a physical copy of Plaintiffs’ Supplemental Opposition to the Government for in-person receipt at the Court by counsel for the Department of Justice. That filing was originally placed under seal to protect classified Government information, but the Government requires access to that submission to ascertain its contents before a plan for the unsealing of this filing can be resolved.¹ The United States has authority to protect and control classified national security information, *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988), and here seeks to determine the extent to which the sealed submission at ECF No. 146 contains classified information.

4. In its Status Report, the Government proposed to file a further status report by December 16, 2022, “informing the Court on the progress of its discussions with the parties and, in particular, on whether the Government and the parties have agreed on a plan for unsealing the two presently sealed documents, as well as on a protective order.” Status Report at 3. The Government seeks to provide the Court with a further update on December 16 regarding a plan for unsealing both documents, but to do so needs access to the sealed Supplemental Opposition at ECF. No. 146.

¹ In this motion, the Government seeks only a copy of the filing—not to take control of the document from the Court or any party—and the granting of this motion would be without prejudice to any objection a party may later wish to make concerning the status of any information in the document or its role in this case. The sole request the Government makes at this time is to provide it a copy of the sealed document. And since Plaintiffs filed the submission on the public docket, the Government is not here seeking a copy of any confidential information controlled by any party.

WHEREFORE, the Government respectfully requests that the Court order the Clerk of Court to provide a physical copy of the sealed Supplemental Opposition at ECF No. 146 to the Government for in-person receipt at the Court by counsel for the Department of Justice. A proposed order is attached.

Dated: December 9, 2022

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
Civil Division

ANTHONY J. COPPOLINO
Deputy Branch Director

/s/ Christopher D. Edelman
CHRISTOPHER D. EDELMAN
(D.C. Bar No. 1033486)
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, D.C. 20005
Tel: (202) 305-8659
Fax: (202) 616-8460
Email: christopher.edelman@usdoj.gov

Counsel for the United States of America